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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/032,893	02/27/1998	JOHN O. BIESER	41824B	1428

7590 02/26/2002

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EXAMINER

JUSKA, CHERYL ANN

ART UNIT	PAPER NUMBER
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1771

DATE MAILED: 02/26/2002

26

Please find below and/or attached an Office communication concerning this application or proceeding.

AS-25

<b>Office Action Summary</b>	<b>Application No.</b> 09/032,893	<b>Applicant(s)</b> BIESER ET AL.	
	<b>Examiner</b> Cheryl Juska	<b>Art Unit</b> 1771	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 20 November 2001.
- 2a) ☒ This action is **FINAL**.      2b) ☒ This action is non-final.      (c) 7/14/02
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-6 and 9-12 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-6 and 9-12 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on \_\_\_\_\_ is: a) ☐ approved b) ☐ disapproved by the Examiner.  
If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

**Priority under 35 U.S.C. §§ 119 and 120**

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
a) ☐ All   b) ☐ Some \*   c) ☐ None of:  
1. ☐ Certified copies of the priority documents have been received.  
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.  
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).  
\* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).  
a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

**Attachment(s)**

- |  |   |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)                             | 4) <input type="checkbox"/> Interview Summary (PTO-413) Paper No(s). _____  |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)         | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____ | 6) <input type="checkbox"/> Other: _____                                    |

## DETAILED ACTION

### *Claim Rejections - 35 USC § 103*

1. Claims 1-6 and 9-12 stand rejected under 35 U.S.C. 103(a) as being unpatentable over the cited Jialanella patent in view of the cited Fink patent, as set forth in section 5 of the last Office Action.

2. Alternatively, claims 1-6 and 9-12 stand rejected under 35 U.S.C. 103(a) as being unpatentable over the cited Fink patent in view of the cited Jialanella patent, as set forth in section 6 of the last Office Action.

### *Response to Arguments*

3. Applicant's arguments filed on November 20, 2001, have been fully considered but they are not persuasive. Specifically, Applicant traverses the above rejections over Fink and Jialanella, by asserting that Fink teaches away from the homogeneously branched ethylene (HBE) polymers as the extruded adhesive sheet (Response, page 3, 1<sup>st</sup> paragraph).

In response, it is first asserted that the second rejection (i.e., Fink in view of Jialanella) argued that it would have been obvious to substitute the Jialanella HBE adhesive for the *polyolefin* adhesive disclosed by Fink. Thus, the Examiner is not relying upon Fink's specific polyethylene teachings, but rather the polyolefin teachings in general.

Secondly, it is argued that it is within the general skill of a worker in the art to select a known material on the basis of its suitability for the intended use as a matter of obvious design choice. *In re Leshin*, 125 USPQ 416. Since Jialanella clearly teaches the suitability of the HBE

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polymers as carpet backing adhesives, it would have been obvious to one of ordinary skill in the art to employ the HBE polymer in the carpet structure of Fink.

Thirdly, it is reiterated that it would have been obvious to one skilled in the art to heat the adhesive backing disclosed by Jialanella to the extent that said adhesive penetrates and consolidates the primary backing and the tufts therein, as is clearly taught by Fink. Thus, the first rejection (i.e., Jialanella in view of Fink) does not rely specifically upon Fink's teaching of adhesives, but generally upon Fink's teaching of an extruded thermoplastic adhesive backing which intimately contacts, penetrates, and consolidates the tufted primary backing. Therefore, Applicant's arguments are found unpersuasive and the above rejections are hereby maintained.

Any inquiry concerning this communication or earlier communications from the Examiner should be directed to Cheryl Juska whose telephone number is 703-305-4472. The Examiner can normally be reached on Monday-Friday 10am-6pm.

If attempts to reach the Examiner by telephone are unsuccessful, the Examiner's supervisor, Terrel Morris can be reached on 703-308-2414. The fax phone numbers for the organization where this application or proceeding is assigned are 703-872-9310 for regular communications and 703-872-9311 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-308-0661.

cj  
February 14, 2002



CHERYL A. JUSKA  
PRIMARY EXAMINER